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OFFICE OF PETITIONS

In re Application of :
Romero et al. :
Application No. 10/713,791 : DECISION REFUSING STATUS
Filed: November 13, 2003 : UNDER 37 CFR § 1.47(a)
Attorney Docket No. 4239-67284-01 :
For : METHOD AND KITS FOR DETERMINING :
RISK OR PRE-TERM DELIVERY :

This is a decision on the petition styled "Petition Under 37 CFR 1.47 to Accept This Application Where Joint Inventors Have Refused to Join" filed July 18, 2004. The petition is being treated under 37 CFR 1.47(a).

The petition is **DISMISSED**.

Rule 47 applicant is given **TWO MONTHS** from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 C.F.R. § 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 C.F.R. § 1.136(a).

The above-identified application was filed on November 13, 2003, without an executed oath or declaration and missing the statutory basic filing fee. Accordingly, on February 24, 2004, applicants were mailed a "Notice to File Missing Parts of Nonprovisional Application," requiring submission of an executed oath or declaration, payment of the filing fee, additional claim fees and payment of the surcharge for late filing under § 1.16(e).

In response, rule 47 applicants filed the instant petition, along with payment of the petition fee, the basic filing fee, additional claim fees and the late surcharge. This response was made timely by an accompanying petition (and fee) for extension of time within the third month. On petition, applicants assert that status under § 1.47(a) is proper because inventors Buhimschi and Christner

A grantable petition under 37 C.F.R. § 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or found, after diligent effort, or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. The instant petition does not satisfy requirement (2).

Pursuant to 35 U.S.C. 115 and 37 CFR § 1.63(a), an oath or declaration filed under § 1.51(b)(2) as a part of a nonprovisional application must identify the country of citizenship of each inventor. Further, the declaration, pursuant to § 1.63(c)(1), unless such information is supplied on an application data sheet in accordance with § 1.76, must also identify the mailing address, and the residence if an inventor lives at a location which is different from where the inventor customarily receives mail, of each inventor.

Although the declaration submitted identifies by name inventors Buhimschi and Christner as a joint inventors, the declaration does not include the respective citizenship and mailing address for either inventor. Nor does the application include an application data sheet in accordance with § 1.76 identifying the respective inventors mailing address and/or residence.

The requirement for the citizenship of inventors Buhimschi and Christner is statutory and cannot be waived. A new declaration is required. The requirement for submission of the mailing address and/or residence of inventors Buhimschi and Christner may be satisfied in the new declaration or by way of submission of an application data sheet. See § 1.76.

Further correspondence with respect to this matter should be addressed as follows:

By mail:

**Mail Stop PETITION
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450**

By hand: U.S. Patent and Trademark Office
220 20th Street S.
Customer Window, Mail Stop PETITION
Crystal Plaza Two, Lobby, Room 1B03
Arlington, VA 22202

The centralized facsimile number is **(703) 872-9306**.

Any questions concerning this matter may be directed to the undersigned at (703) 305-9220.

A handwritten signature in cursive script, appearing to read "Sherry D. Brinkley".

Sherry D. Brinkley
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy